

## GEORGE R. JACKSON & CO.

MARCH 1, 1860.—Laid on the table, and ordered to be printed.

Mr. CLEMENS, from the Committee on Commerce, made the following

### REPORT.

*The Committee on Commerce, to whom were referred the petition and accompanying papers in the case of George R. Jackson & Co., have had the same under consideration, and submit the following report:*

The petitioners allege that, in pursuance of the act of Congress making an appropriation for building a custom-house at Richmond, Virginia, approved 21st of August, 1852, the Secretary of the Treasury of the United States, by Major A. H. Bowman, engineer in charge of the Bureau of Construction, &c., entered into a contract with J. J. Attmore & Co. for building the same.

That the petitioners, being engaged in iron works in the city of New York, on the 11th of September, 1855, entered into a sub-contract with the aforesaid J. J. Attmore & Co. to furnish all the materials of wrought and cast iron, &c., for the said Richmond custom-house, according to the plans, specifications and directions of the superintendent, &c.; and when the same should be completed they were to receive the sum of \$19,191, ninety per cent. to be paid them as the work progressed, and when completed and accepted the remaining ten per cent.

They aver that they faithfully performed all the stipulations of their said contract to the entire satisfaction of the contractors and superintendents on the part of the government of the United States. But the petitioners admit that, in consequence of the failure of the aforesaid contractors to meet their promises and obligations in regard to the payment to them and work performed and materials furnished, some delay occurred in commencing and putting on the roof of the said custom-house, which, agreeably to their contract, they engaged to furnish, when they received a letter from the Hon. Howell Cobb, Secretary of the Treasury, dated 28th day of August, 1857, stating that "the contractors for the said custom-house complained that the building had been ready for nearly two weeks to commence the roof, and that nothing had been yet done towards commencing on that part of the work." It was deemed important by the Secretary that the work should be done with as little delay as possible, so that the plastering might proceed. In that view the hope was expressed that the said petitioners should

at once send on men, and complete the work without further loss of time.

By paper number two, filed, it appears that a letter was addressed to the petitioners, under date of September, 1857, from the Treasury Department, of the following tenor and effect, viz: That it was against the rules of the Treasury Department to make advances upon materials furnished, but that Mr. Homer, agent of the contractors, had been at Washington, and after much solicitation the Secretary had consented to make an advance, but with the explicit understanding that the said petitioners shall proceed at once to put the said roof on. It further appears that on the 11th of September, 1857, the petitioners addressed the said Secretary, and desired to know whether he would accept a draft for \$5,000 in favor of said petitioners, and on account of said iron work, to be paid out of the percentage retained by the Department.

To this, on the 15th of September, 1857, a reply was transmitted of the following tenor and effect, viz: That the Treasury Department knows no party in the Richmond custom-house contract save Messrs. Attmore & Co., and their attorney, Mr. Homer. It was stated also that it was not the custom of the department to accept drafts of contractors, even when money is due them. Mr. Homer has asked an advance on the retained percentage, and it has been conditionally granted, but that it will not be paid unless the work progresses satisfactorily. It was further stated that orders had been given to serve the eight days' notice on him, as provided in the contract; that if the roof is not commenced in that time the work will be taken out of Mr. Homer's hands, and completed at his expense. If the work advances well the department will carry out its agreement with Mr. Homer by the advance of \$5,000 in the form of a payment to him, and that he could endorse the said draft over to the petitioners aforesaid.

By the deposition of George R. Jackson, one of said petitioners, it appears that he went to Richmond, and at considerable sacrifice arranged the claim with C. Homer, attorney for J. J. Attmore & Co., by his giving the deponent a draft on the Treasury Department for the sum of \$4,250, which draft deponent understood would be retained for his said claim. Deponent then returned to New York, and proceeded to furnish the work, and had performed about one-half of it, when the department took the work out of the hands of J. J. Attmore & Co. Under the state of facts above presented, the petitioners claimed a balance of \$2,284 68, according to a bill of particulars filed with said papers.

In consideration of the whole case, the committee report—

*First.* That the allegations of the petitioners as to furnishing the materials and labor are facts. So far as shown by the papers, the allegation as to non-payment by the contractors is also true; but,

*Second.* The allegations as to the action of the Treasury Department are only partially supported by the evidence in the case. The chief point of reliance on the part of the petitioners seems to be on the action of the department in regard to the draft herein mentioned; thus seeking through the same to establish an equitable claim against the government for the said balance of \$2,284 60.

Messrs. Jackson & Co. were sub-contractors for the iron work of the

said building. This portion of the work not progressing satisfactorily, the contractors were officially urged to vigor.

The said petitioners were informed there was no way by which the department could make the payment a *certainty*, but advised the said petitioners to procure a draft from the contractors to their order for the amount which would be due, and place such draft on file in the department; and that then, upon final settlement, if there should prove to be that amount due the said petitioners as sub-contractors, the said draft would be paid.

This draft said petitioners procured and placed on file. There was no legal acceptance thereof; on the contrary, the petitioners were officially informed that it was not the custom of the department to accept drafts of contractors even when money was due them. The petitioners were further informed that the draft would not be paid unless the work progresses satisfactorily. It was then simply received and placed on file, that it might be before the department upon the final settlement with the original contractors, J. J. Attmore & Co. Such receipt carried no obligation for payment, nor was it intended to create such obligation. It was simply evidence of an adjusted account between the parties, which would be recognized in final payment, if there should prove to be anything due the said contractors, J. J. Attmore & Co. The draft had no endorsement or acceptance on its face by any officer of the government. It may be considered an invariable rule in all cases for the government to come under no obligations to sub-contractors, as no parties are recognized but the original contractors.

That this course was pursued in this case is proven by the records of the department and by the letters of which the petitioners furnish copies.

The work was taken in hand by the department, and completed under the terms of the original contract at contractor's cost. Upon final settlement it was found not only that there was nothing due the contractors, but that they were largely indebted to the government. Under these circumstances, the committee have unanimously concluded that the said petitioners, George R. Jackson & Co., have neither legal nor equitable claims against the federal government; that they stand now precisely where they did under their contract with J. J. Attmore & Co., and must look to them alone for relief.

The said petition is therefore denied.

All of which is respectfully submitted.

